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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/816,220	03/26/2001	Tohru Kanno	204571US2	5784

22850 7590 09/06/2006

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EXAMINER

GIBBS, HEATHER D

ART UNIT	PAPER NUMBER
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2625

DATE MAILED: 09/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Response to Amendment

1. The amendment filed on June 20, 2006 has been entered and made of record. Claims 1-4, 6, 8-31 are currently pending.

Allowable Subject Matter

2. Claims 1-4, 6, 8-21 are allowed.
3. The following is an examiner's statement of reasons for allowance: Claims 1-4, 6, 8-21 are allowable over the prior art of record because the Examiner found neither prior art cited in its entirety, nor based on the prior art, found any motivation to combine any of the said prior art which teaches an image processing apparatus comprising: a scanner, a main body, wherein homing operation of the scanner is performed independently of the initializing process of the control section of the main body; wherein a warm-up of the main body is started upon confirmation of the homing operation of the scanner; and wherein when the control section of the main body confirms the completion of the homing operation, the control section of the main body supplies necessary data for making an automatic adjustment to the scanner, and the scanner makes the automatic adjustment based on the data supplied from the control section of the main body, as taught in Claims 1-3, 12, 15-17, 19; and a method for initializing an image processing apparatus comprising: performing a homing operation of the scanner independently of an initializing process of the main body; supplying necessary data for the making an automatic adjustment to the scanner, the necessary data being supplied

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by a control section of the main body to the scanner, and automatically adjusting the scanner based on the necessary data, when the control section of the main body confirms a completion of the homing operation of the scanner and starting warm-up when the main body confirms completion of the homing operation of the scanner, as taught in Claims 8-10, including all of the features recited therein.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The USPTO "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Official Gazette notice of 22 November 2005), Annex IV, reads as follows:

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs, which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.

When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994) (claim to data structure stored on a computer readable medium that increases computer efficiency held statutory) and *Warmerdam*, 33 F.3d at 1360-61, 31 USPQ2d at 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory).

In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and

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the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See *Lowry*, 32 F.3d at 1583-84, 32 USPQ2d at 1035.

Claims 22-31 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 22-31 define a computer program for initializing an image processing apparatus having a main body for processing image information input by a scanner embodying functional descriptive material. However, the claim does not define a computer-readable medium or memory and is thus non-statutory for that reason (i.e., "When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized" – Guidelines Annex IV). That is, the scope of the presently claimed a computer program can range from paper on which the program is written, to a program simply contemplated and memorized by a person. The examiner suggests amending the claim to embody the program on "computer-readable medium" or equivalent in order to make the claim statutory. Any amendment to the claim should be commensurate with its corresponding disclosure.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Heather D. Gibbs whose telephone number is 571-272-7404. The examiner can normally be reached on M-Thu 8AM-7PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David K. Moore can be reached on 571-272-7437. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Heather D Gibbs
Examiner
Art Unit 2625

hdg



THOMAS D.
~~THOMAS~~ LEE
PRIMARY EXAMINER